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Item 5 of the provisional agenda*

CONTINUATION OF PREPARATIONS FOR THE EIGHTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Addendum

Recommendations on item 6 (topic 4) of the provisional agenda of the Eighth Congress: Prevention of delinquency, juvenile justice and the protection of the young: policy approaches and directions

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An Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic 4: "Prevention of delinquency, juvenile justice and the protection of the young: policy approaches and directions" was held at Vienna from 18 to 22 April 1988 (A/CONF.144/IPM.3). The recommendations adopted at that meeting were reviewed by the Committee on Crime Prevention and Control at its tenth session, and endorsed by the Economic and Social Council in its resolution 1989/69. The following draft resolutions and annexes thereto are revised versions of those recommendations, and reflect the comments made by the Committee at its tenth session (E/1988/20, annex IV), as well as the observations made during the five regional preparatory meetings for the Eighth Congress (A/CONF.144/RPM.1-5).

DRAFT RESOLUTION I

United Nations Guidelines for the Prevention of Juvenile Delinquency (The Guidelines of Riyadh)

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Bearing in mind the Universal Declaration of Human Rights, 1/ the International Covenant on Economic, Social and Cultural Rights, 2/ the International Covenant on Civil and Political Rights, 2/ as well as other international instruments pertaining to the rights and well-being of young persons, including relevant standards established by the International Labour Organisation,

Bearing in mind also the Declaration of the Rights of the Child, 3/ the Convention on the Rights of the Child, 4/ and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 5/

Recalling General Assembly resolution 40/33 of 29 November 1985 which, *inter alia*, adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice on the recommendation of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling also that the General Assembly, in its resolution 40/35 of 29 November 1985, adopted on the recommendation of the Seventh United Nations Congress, called for the development of standards for the prevention of delinquency in order to assist Member States in formulating and implementing specialized programmes and policies, emphasizing assistance, care and community involvement, and called upon the Economic and Social Council to report

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1/ General Assembly resolution 217 A (III) of 10 December 1948.

2/ General Assembly resolution 2200 A (XXI), annex, of 16 December 1966.

3/ General Assembly resolution 1386 (XIV) of 20 November 1959.

4/ General Assembly resolution 44/25 of 20 November 1989.

5/ General Assembly resolution 40/33 of 29 November 1985.

to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on the progress achieved with respect to these standards, for review and action,

Recalling further Economic and Social Council resolution 1986/10 of 21 May 1986, requesting the Eighth Congress to consider the draft guidelines for the prevention of juvenile delinquency, with the view to their adoption,

Recognizing the need to develop national, regional and international approaches and strategies for the prevention of juvenile delinquency,

Affirming that every child has basic human rights, including, in particular, access to free education,

Mindful of the large number of young persons who may or may not be in conflict with the law but who are abandoned, neglected, abused, exposed to drug abuse, in marginal circumstances, and in general who are at social risk,

Taking into account the benefits of progressive policies for the prevention of delinquency as well as for the welfare of the community,

1. Notes with satisfaction the substantive work accomplished by the Committee on Crime Prevention and Control and the Secretariat in the formulation of the Guidelines for the Prevention of Juvenile Delinquency;

2. Expresses appreciation for the valuable collaboration of the Arab Security Studies and Training Center at Riyadh, in hosting the International Meeting of Experts on the Development of the United Nations Draft Guidelines for the Prevention of Juvenile Delinquency, held at Riyadh from 28 February to 1 March 1988, in co-operation with the United Nations Office at Vienna;

3. Adopts the Guidelines for the Prevention of Juvenile Delinquency annexed to the present resolution, to be designated "The Guidelines of Riyadh";

4. Calls upon Member States, in their comprehensive crime prevention plans, to apply the Guidelines in national law, policy and practice, and to bring the Guidelines to the attention of relevant authorities, including policy makers, juvenile justice personnel, educators, the mass media, practitioners and scholars;

5. Requests the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Guidelines in all of the official languages of the United Nations;

6. Requests further the Secretary-General and invites all relevant United Nations offices and interested institutions, in particular, the United Nations Children's Fund, as well as individual experts to make a concerted effort to promote the application of the Guidelines;

7. Urges all relevant bodies within the United Nations system to collaborate with the Secretary-General in taking appropriate measures to ensure the implementation of the present resolution;

8. Invites the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to consider this new international instrument, with a view to promoting the application of its provisions;

9. Invites also Member States to strongly support the organization of technical and scientific workshops, as well as pilot and demonstration projects on practical issues and policy matters relating to the application of the provisions of the Guidelines and to the establishment of concrete measures for community-based services designed to respond to the special needs, problems and concerns of young persons, and requests the Secretary-General to co-ordinate efforts in this respect;

10. Invites further Member States to inform the Secretary-General on the implementation of the Guidelines and to report regularly to the Committee on Crime Prevention and Control on the results achieved.

Annex

UNITED NATIONS GUIDELINES
FOR THE PREVENTION OF JUVENILE DELINQUENCY
(The Guidelines of Riyadh)

I. FUNDAMENTAL PRINCIPLES

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

3. In the implementation of these Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

4. The need for and importance of progressive delinquency prevention policies and measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(a) The provision of opportunities to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

(b) Specialized approaches and philosophies for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(d) Safeguarding the well-being, development, rights and interests of all young persons;

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(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

5. Community-based services and programmes should be developed for the prevention of juvenile delinquency. More formal agencies of social control should only be utilized as a means of last resort.

II. SCOPE OF THE GUIDELINES

6. These Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

7. These Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. GENERAL PREVENTION

8. Comprehensive prevention plans should be instituted at every level of government and include the following:

(a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;

(b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;

(c) Mechanisms for the appropriate co-ordination of prevention efforts between governmental and non-governmental agencies;

(d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;

(e) Methods for effectively reducing the opportunity to commit delinquent acts;

(f) Community involvement through a wide range of services and programmes;

(g) Close interdisciplinary co-operation between national, state, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labour, child-care,

health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;

(h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;

(i) Specialized personnel at all levels.

IV. SOCIALIZATION PROCESSES

9. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

A. Family

10. Every society should place a high priority on the needs and well-being of the family and of all its members.

11. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

12. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

13. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

14. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous and migrant families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

15. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

16. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no alternative.

17. It is important to emphasize the social control function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

18. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

B. Education

19. Governments are under an obligation to make public education accessible to all young persons.

20. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;

(b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

(c) Involvement of young persons as active participants in, rather than mere objects of, the educational process;

(d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community, as well as mutual understanding and harmony;

(e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;

(f) Provision of information and guidance regarding vocational training, employment opportunities and career development;

(g) Avoidance of harsh disciplinary measures, particularly corporal punishment.

21. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

22. Young persons should be informed about the law, their rights and responsibilities under the law, as well as the universal value system.

23. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

24. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs should be made available to the student body.

25. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.

26. Through a variety of educational programmes, teachers and other adults should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underpriviledged, disadvantaged, ethnic or other minority and low-income groups.

27. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and learning methods and approaches and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

28. School systems should plan, develop and implement extra-curricular activities of interest to young persons, in co-operation with community groups.

29. Assistance should be given to children and young persons who find it difficult to comply with attendance codes, as well as to "drop-outs".

30. Schools should promote policies and rules that are fair and just; students should be represented in school policy, decision-making and disciplinary matters and proceedings.

C. Community

31. Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

32. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

33. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home.

34. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition from childhood to adulthood. Such services should include special programmes for young drug abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

35. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

36. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.

37. Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

38. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.

D. Mass media

39. The mass media should be encouraged to ensure that the child has access to information and material from a diversity of national and international sources.

40. The mass media should be encouraged to portray the positive contribution of young persons to society.

41. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

42. The mass media generally, and the television and film media in particular, should be encouraged to reduce the level of violence portrayed and to display violence and exploitation disfavourably, as well as to avoid demeaning and degrading presentations of children, women and interpersonal relations and to promote egalitarian principles and roles.

43. The mass media should be aware of its extensive role and responsibility, as well as its influence, in communications relating to youthful drug abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at the primary, secondary and tertiary levels should be promoted.

V. SOCIAL POLICY

44. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

45. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned

or exploited by the parents or guardians; and (d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians.

46. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

47. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.

48. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

49. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.

VI. LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION

50. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

51. Legislation preventing the victimization, abuse and exploitation of children and young persons should be enacted and enforced.

52. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

53. Legislation and enforcement aimed at regulating and controlling accessibility of weapons of any sort to children and young persons should be pursued.

54. In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or penalized if committed by an adult is not considered an offence or penalized if committed by a young person.

55. Consideration should be given to the establishment of an office of Ombudsman or similar independent office for young persons, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. Child advocacy services should also be established.

56. Police and other justice personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.

57. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

VII. RESEARCH, POLICY DEVELOPMENT AND CO-ORDINATION

58. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and co-ordination between economic, social, educational and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

59. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

60. Regional and international co-operation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision-makers should be further developed and strengthened.

61. Technical and scientific co-operation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

62. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

63. Appropriate United Nations bodies, agencies and offices should pursue close collaboration and co-ordination on various questions related to children, juvenile justice and youth crime and juvenile delinquency prevention.

64. On the basis of these Guidelines, the United Nations Secretariat, in co-operation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.

DRAFT RESOLUTION II

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Bearing in mind the Universal Declaration of Human Rights, 1/ the International Covenant on Civil and Political Rights, 2/ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

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1/ General Assembly resolution 217 A (III) of 10 December 1948.

2/ General Assembly resolution 2200 A (XXI), annex, of 16 December 1966.

Punishment, 3/ the Convention on the Rights of the Child, 4/ as well as other international instruments relating to the protection of the rights and well-being of young persons,

Bearing in mind also the Standard Minimum Rules for the Treatment of Prisoners, 5/ adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Bearing in mind also the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988,

Recalling General Assembly resolution 40/33 of 29 November 1985 and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 6/

Recalling also resolution 21 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which called for the development of United Nations rules for the protection of juveniles deprived of their liberty,

Recalling further Economic and Social Council resolution 1986/10, section II, of 21 May 1986, which, inter alia, requested the Secretary-General to report on progress achieved in respect of the Rules to the Committee on Crime Prevention and Control, at its tenth session, and requested the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider the proposed Rules with a view to their adoption,

Alarmed at the conditions and circumstances under which juveniles are being deprived of their liberty all over the world,

Aware that juveniles deprived of their liberty are highly vulnerable to abuse, victimization and the violation of their rights,

Concerned that many systems do not differentiate between adults and juveniles at various stages of justice administration, and that juveniles are therefore being held in goals and facilities with adults,

1. Affirms that the placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period;

2. Recognizes that, because of their high vulnerability, juveniles deprived of their liberty require special attention and protection and that their rights and well-being should be guaranteed during and after the period when they are deprived of their liberty;

3/ General Assembly resolution 39/46 of 10 December 1984.

4/ General Assembly resolution 44/25 of 20 November 1989.

5/ Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.83.XIV.1), sect. G.

6/ General Assembly resolution 40/33 of 29 November 1985.

3. Notes with appreciation the valuable work of the Secretariat and the collaboration which has been established between the Secretariat and experts, practitioners, intergovernmental organizations, the non-governmental community, particulary Amnesty International, Defence for Children International and Rädda Barnen (Swedish Save the Children), and scientific institutions concerned with children's rights and juvenile justice in developing in the Rules;

4. Approves the United Nations Rules for the Protection of Juveniles Deprived of their Liberty annexed to the present resolution;

5. Calls upon the Committee on Crime Prevention and Control to formulate measures for the effective implementation of the Rules, with the assistance of the United Nations institutes on the prevention of crime and the treatment of offenders,

6. Invites Member States to adapt, wherever necessary, their national legislation, policies and practices, particularly in training all categories of juvenile justice personnel, to the spirit of the Rules, and to bring them to the attention of relevant authorities and the public in general;

7. Also invites Member States to inform the Secretary-General of their efforts to apply the Rules in law, policy and practice, and to report regularly to the United Nations Committee on Crime Prevention and Control on the results achieved in their implementation;

8. Requests the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Rules in all of the official languages of the United Nations;

9. Requests the Secretary-General and urges Member States to allocate the necessary resources to ensure the successful application and implementation of the Rules, in particular in the areas of recruitment, training and exchange of all categories of juvenile justice personnel;

10. Urges all relevant bodies of the United Nations system, in particular the United Nations Children's Fund, the regional commissions and specialized agencies, the United Nations institutes for the prevention of crime and the treatment of offenders, and all concerned intergovernmental and non-governmental organizations, to collaborate with the Secretariat and to take the necessary measures to ensure a concerted and sustained effort within their respective fields of technical competence to promote the application of the Rules;

11. Invites the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to consider this new international instrument, with a view to promoting the application of its provisions.

Annex

UNITED NATIONS RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY

I. FUNDAMENTAL PERSPECTIVES

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Every effort should be made to restrict, to the extent possible, the imprisonment of juveniles.

2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period. It should be limited to exceptional cases, for purposes of carrying out a sentence, upon conviction, for the most serious types of offence, and with due regard to the attendant circumstances and conditions. The maximum length of the sanction should be determined by the judicial authority before the juvenile is deprived of his or her liberty. Juveniles should not be arrested or detained without charge.

3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter whenever necessary, in particular during medical examinations and disciplinary proceedings.

7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that relate to the rights, care and protection of juveniles, children and all young persons.

II. SCOPE AND APPLICATION OF THE RULES

10. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner different from that used in the case of an adult, and who falls under the upper age limit considered to be the major dividing age limit separating juveniles from adults. The age

limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in another public or private custodial setting from which this person is not permitted to leave at will by order of any judicial, administrative or other public authority.

11. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human dignity of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

12. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty, such as social security rights and benefits, freedom of association and, upon reaching the minimum age established by law, the right to marry.

13. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent judicial authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

14. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Parts I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and part III applies specifically to juveniles under arrest or awaiting trial.

15. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. JUVENILES UNDER ARREST OR AWAITING TRIAL

16. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. In any case, untried detainees should be separated from convicted juveniles.

17. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisors. Such communication shall ensure privacy and confidentiality;

(b) Juveniles should be provided with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. In no case should work, education or training cause the continuation of the detention;

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

IV. THE MANAGEMENT OF JUVENILE DETENTION FACILITIES

A. Records

18. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow the juvenile and an appropriate and independent third party to have access to and to consult the file on request. Every juvenile shall reserve the right to have his or her record expunged upon release.

19. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

B. Admission, registration, movement and transfer

20. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

(a) Information on the identity of the juvenile;

(b) The fact of and reasons for commitment and the authority therefor;

(c) The day and hour of admission, transfer and release;

(d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;

(e) Details of known physical and mental health problems, including drug and alcohol abuse.

21. The above-mentioned information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

22. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

23. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

24. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints, and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

25. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

C. Classification and placement

26. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued.

27. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

28. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been definitively proven to be beneficial for the juveniles concerned.

29. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the

juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

D. Physical environment and accommodation

30. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

31. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

32. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

33. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

34. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

35. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

36. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

E. Education, vocational training and work

37. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

38. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

39. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

40. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

41. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

42. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

43. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

44. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

45. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to idemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

F. Recreation

46. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

G. Religion

47. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by contacting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any lawful religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

H. Medical care

48. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should normally be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

49. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

50. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

51. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injurously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

52. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

53. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

54. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they should never be administered with a view to illiciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

I. Notification of illness, injury and death

55. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours.

56. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made available to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

57. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

J. Contacts with the wider community

58. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

59. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

60. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive all correspondence adressed to him or her.

61. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

K. Limitations of physical restraint and the use of force

62. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 63.

63. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause injury, pain, humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

64. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. Disciplinary procedures

65. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

66. All disciplinary measures constituting cruel, inhumane or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

67. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

(a) Conduct constituting a disciplinary offence;

(b) Type and duration of disciplinary sanctions that may be inflicted;

(c) The authority competent to impose such sanctions;

(d) The authority competent to consider appeals.

68. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

69. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

70. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

M. Inspection and complaints

71. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

72. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

73. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

74. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

75. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

76. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

77. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

N. Return to the community

78. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

79. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

V. PERSONNEL

80. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when this is appropriate and beneficial to the level of support and training they can provide. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

81. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

82. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

83. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance co-operation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.

84. The personnel should receive such training as will enable them to carry out their responsibilities effectively, including in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

85. The director of a facility should be adequately qualified for his or her task by administrative ability, suitable training and experience, and should carry out his or her duties on a full-time basis.

86. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles. In particular:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and in particular should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect to the dignity of juveniles as human beings.

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Item 5 of the provisional agenda*

CONTINUATION OF PREPARATIONS FOR THE EIGHTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Addendum

Recommendations on item 7 (topic 5) of the provisional agenda of the Eighth Congress: United Nations norms and guidelines in crime prevention and criminal justice: implementation and priorities for further standard setting

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*E/AC.57/1990/1.

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1. The Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic 5: "United Nations Norms and Guidelines in Crime Prevention and Criminal Justice: Implementation and Priorities for Further Standard Setting" was held at Vienna from 27 June to 1 July 1988. The recommendations adopted by the Meeting (A/CONF.144/IPM.5) were reviewed by the Committee on Crime Prevention and Control at its tenth session, and endorsed by the Economic and Social Council in its resolution 1989/69, paragraphs 5 and 11, of 24 May 1989. With the exception of the draft Guidelines on the Role of Prosecutors, the draft resolutions and annexes thereto set forth below are revised versions of the recommendations and reflect the comments of the Committee (E/1988/20, annex IV) as well as the observations of the five regional preparatory meetings for the Eighth Congress (A/CONF.144/RPM.1-5).

2. In accordance with resolution 1989/32 of the Commission on Human Rights, due account was taken, in drawing up the Draft Basic Principles on the Role of Lawyers, of the study and draft declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1985/18 and Add.1-6 and E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1). Also, special attention was paid to recommendations made at various meetings organized by concerned non-governmental organizations in consultative status with the Economic and Social Council, such as the Conference of the International Commission of Jurists, held under United Nations auspices at Caracas from 14 to 16 January 1989, the Conference of the International Bar Association, held at Strasbourg from 2 to 6 October 1989, and the XIV International Congress on Penal Law, held at Vienna from 1 to 7 October 1989.

3. The draft Guidelines on the Role of Prosecutors were drawn up in pursuance of resolution 7 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. a/

4. On the basis of that resolution, draft Guidelines on the Role of Prosecution were drawn up by the Secretariat, taking into account work previously done in this field, with special attention being paid to the following: requirements of fairness, openness, accountability and efficiency in matters relating to prosecution; qualifications, selection and training of prosecutors; their status, conditions of service and tenure; discretionary powers of prosecutors; their role in criminal proceedings; relations with the police and other public institutions; and disciplinary proceedings.

5. Particular emphasis was placed on the following issues:

(a) Importance of the prosecutorial decision. The decision whether or not to prosecute is the most significant step in the prosecutorial process. A wrong decision to prosecute or to waive prosecution may undermine public confidence in criminal justice. In addition, the decision-making process should give due consideration to the interests of the victim, the suspect and the community;

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a/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985: Report prepared by the Secretariat (United Nations Publication, Sales No. E.86.IV.1), chap. I, sect. E.

(b) Special position of the prosecutor. The position of the prosecutor imposes responsibilities not faced by the defence lawyers, because the prosecutor can never work for the wrong result. Defence lawyers can ethically defend a guilty person and still be serving justice; the prosecutor, conversely, must never prosecute a person of whose innocence he or she is convinced;

(c) Exclusion of discriminatory factors in prosecutorial decision-making. A decision whether or not to prosecute should not be influenced by such factors as the following:

(i) Race, religion, sex, national origin or political association, activities or beliefs of the suspect or any other person involved;

(ii) Personal feelings concerning the suspect or the victim;

(iii) Possible political advantage or disadvantage to the Government or any political group or party;

(iv) Possible effects of the decision on the personal or professional circumstances of those responsible for the prosecution decision;

(d) Exercise of discretionary functions. In countries where prosecutors are vested with discretionary functions, fairness, openness, consistency and accountability in prosecutorial decision-making are of particular importance. However, fairness does not mean weakness, nor does consistency mean rigidity. In view of the multiplicity of factors to be considered, the criteria for the exercise of discretion cannot be reduced to a strict formula. While it would be impossible to avoid certain elements of subjectivity in prosecutorial decisions, the potential for inconsistency can be reduced. In this regard, the law and the prosecuting authority itself should provide prosecutors with objective criteria for decision-making and with mechanisms and safeguards for the internal review of decisions in appropriate cases to prevent or limit abuses of the prosecutor's far-reaching powers, thus ensuring both consistency and accountability.

6. The Guidelines annexed to draft resolution V reflect these and other relevant issues, as well as the comments received from Governments, members of the Committee, the regional preparatory meetings for the Eighth Congress, the United Nations institutes in the field of crime prevention and criminal justice, non-governmental organizations in consultative status with the Economic and Social Council and individual experts.

DRAFT RESOLUTION I

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling the Milan Plan of Action, 1/ adopted by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985,

Recalling also resolution 14 of the Seventh Congress, 2/ in which the Committee on Crime Prevention and Control was called upon to consider measures for the more effective implementation of the Code of Conduct for Law Enforcement Officials,

Taking note with appreciation of the work accomplished, in pursuance of Seventh Congress resolution 14, by the Committee, by the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic 5: "United Nations Norms and Guidelines in Crime Prevention and Criminal Justice: Implementation and Priorities for Further Standard Setting", 3/ and by the regional preparatory meetings for the Eighth Congress,

1. Adopts the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials set forth in the annex to the present resolution;

2. Recommends the Basic Principles for national, regional and interregional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;

3. Invites Member States to take into account and to respect the Basic Principles within the framework of their national legislation and practice;

4. Also invites Member States to bring the Basic Principles to the attention of law enforcement officials and other members of the executive, judges, lawyers, the legislature and the public in general;

5. Further invites Member States to inform the Secretary-General every five years, beginning in 1992, of the progress achieved in the implementation of the Basic Principles, including their dissemination, their incorporation into national legislation, the problems faced in their implementation at the national level and assistance that might be needed from the international community, and requests the Secretary-General to report thereon to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

6. Appeals to all Governments to promote seminars and training courses at the national and regional levels on the role of law enforcement and the necessity of restraints on the use of force and firearms by law enforcement officials;

1/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985: Report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. E.

3/ A/CONF.144/IPM.5.

7. Urges the regional commissions, the regional and interregional institutes in crime prevention and criminal justice, the specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations having consultative status with the Economic and Social Council to become actively involved in the implementation of the Basic Principles and to inform the Secretary-General of the efforts made to disseminate and implement the Basic Principles and the extent of their implementation, and requests the Secretary-General to include this information in his report to the Ninth Congress;

8. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, ways and means of ensuring the effective implementation of this resolution;

9. Requests the Secretary-General:

(a) To take steps, as appropriate, to bring this resolution to the attention of Governments and all United Nations bodies concerned, and to provide for the widest possible dissemination of the Basic Principles;

(b) To include the Basic Principles in the next edition of the United Nations publication entitled Human Rights: A Compilation of International Instruments; 4/

(c) To provide Governments, at their request, with the services of experts and regional and interregional advisers to assist in implementing the Basic Principles and to report to the Ninth Congress on the technical assistance and training actually provided;

(d) To report to the Committee, at its twelfth session, on the steps taken to implement the Basic Principles;

10. Requests the Ninth Congress and its preparatory meetings to consider the progress achieved in the implementation of the Basic Principles.

4/ Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1).

Annex

BASIC PRINCIPLES ON THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICIALS

Whereas the work of law enforcement officials* is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

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*In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights a/ and reaffirmed in the International Covenant on Civil and Political Rights, b/

Whereas the Standard Minimum Rules for the Treatment of Prisoners c/ provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials d/ provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials, e/

Whereas the Seventh Congress, in its resolution 14, inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights, f/

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by

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a/ General Assembly resolution 217 A (III) of 10 December 1948.

b/ General Assembly resolution 2200 A (XXI) (annex) of 16 December 1966.

c/ Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88 XIV.1), sect. G. 30.

d/ Ibid., sect. G. 33.

e/ A/CONF.121/IPM.3, para. 34.

f/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985: Report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E.

Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive and the legislature, and the public.

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapon and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, law enforcement officials should also be equipped with self-defensive equipment such as shields, helmets or bullet-proof vests in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is warranted, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and respect and preserve human life;

(c) Ensure that assistance and medical aid is rendered to any injured or affected persons at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the immediate threat of death or serious injury, to prevent the perpetration of a serious crime involving grave danger to the community, to arrest a person presenting such a danger, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

(c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(e) Provide for warnings to be given, as appropriate, when firearms are to be discharged;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only for policing unlawful assemblies, in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. The use of such means shall be strictly regulated in

national legislation and restricted solely to particularly dangerous violent assemblies. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

Qualifications, training and counselling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative and prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed

report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent review process, including the judiciary. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or could reasonably be expected to know, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility should also rest on the superiors who gave the unlawful orders.

DRAFT RESOLUTION II

Basic Principles on the Role of Lawyers

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling the Milan Plan of Action, 1/ adopted by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985,

Recalling also resolution 18 of the Seventh Congress, 2/ in which the Congress recommended that Member States provide for the protection of practising lawyers against undue restrictions and pressures in the exercise of their functions,

Taking note with appreciation of the work accomplished, in pursuance of Seventh Congress resolution 18, by the Committee on Crime Prevention and Control, by the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic 5: "United Nations Norms and Guidelines in Crime Prevention and Criminal Justice:

1/ *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985: Report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ *Ibid.*, sect. E.

Implementation and Priorities for Further Standard Setting", 3/ and by the regional preparatory meetings for the Eighth Congress,

1. Adopts the Basic Principles on the Role of Lawyers set forth in the annex to the present resolution;

2. Recommends the Basic Principles for national, regional and interregional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;

3. Invites Member States to take into account and to respect the Basic Principles within the framework of their national legislation and practice;

4. Also invites Member States to bring the Basic Principles to the attention of lawyers, judges, members of the executive and the legislature and the public in general;

5. Further invites Member States to inform the Secretary-General every five years, beginning in 1992, of the progress achieved in the implementation of the Basic Principles, including their dissemination, their incorporation into national legislation, the problems faced in their implementation at the national level and assistance that might be needed from the international community, and requests the Secretary-General to report thereon to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

6. Appeals to all Governments to promote seminars and training courses at the national and regional levels on the role of lawyers and the necessity of unrestricted access to the legal profession;

7. Urges the regional commissions, the regional and interregional institutes in crime prevention and criminal justice, the specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations in consultative status with the Economic and Social Council to become actively involved in the implementation of the Basic Principles and to inform the Secretary-General of the efforts made to disseminate and implement the Basic Principles and the extent of their implementation, and requests the Secretary-General to include this information in his report to the Ninth Congress;

8. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, ways and means of ensuring the effective implementation of this resolution;

9. Requests the Secretary-General:

(a) To take steps, as appropriate, to bring this resolution to the attention of Governments and all the United Nations bodies concerned, and to provide for the widest possible dissemination of the Basic Principles;

(b) To include the Basic Principles in the next edition of the United Nations publication entitled Human Rights: A Compilation of International Instruments; 4/

3/ A/CONF.144/IPM.5.

4/ United Nations publication, Sales No. E.88.XIV.1.

(c) To provide Governments, at their request, with the services of experts and regional and interregional advisers to assist in implementing the Basic Principles and to report to the Ninth Congress on the technical assistance and training actually provided;

(d) To report to the Committee, at its twelfth session, on the steps taken to implement the Basic Principles.

Annex

BASIC PRINCIPLES ON THE ROLE OF LAWYERS

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language, or religion,

Whereas the Universal Declaration of Human Rights a/ enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights b/ proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Convenant on Economic, Social and Cultural Rights b/ recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment c/ provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners d/ recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safeguards Guaranteeing Protection of Those Facing the Death Penalty e/ reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at

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a/ General Assembly resolution 217 A (III) of 10 December 1948.

b/ General Assembly resolution 2200 A (XXI) (annex) of 16 December 1966.

c/ General Assembly resolution 43/173 (annex) of 9 December 1988.

d/ Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G.

e/ Ibid., sect. G.

all stages of the proceedings, in accordance with Article 14 of the International Covenant on Civil and Political Rights, b/

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and co-operating with governmental and other institutions in furthering the ends of justice and public interest,

The basic principles set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within their framework of their national legislation and practice, and be brought to the attention of lawyers as well as other persons such as judges, prosecutors, members of the executive and the legislature, and the public in general.

Access to lawyers and legal services

1. Everyone is entitled to call upon the assistance of a lawyer of his choice to protect and establish his rights and to defend him in all stages of criminal proceedings.

2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.

3. Governments shall ensure the provision of sufficient funding and other resources for legal services to be provided to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall co-operate in the organization and provision of services, facilities and other resources.

4. It is the responsibility of Governments and professional associations of lawyers to promote programmes aimed at informing the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. For this purpose, special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and, where necessary, call upon the assistance of lawyers.

Special safeguards in criminal justice matters

5. It is the duty of Governments to ensure that everyone charged with criminal offences, or arrested, detained or imprisoned, is immediately informed by the competent authority of his right to be assisted by a lawyer of his own choice.

6. Any such person who does not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned

to him in order to provide effective legal assistance, without payment by him if he lacks sufficient means to pay for such services.

7. Governments shall further ensure that a person arrested, detained or imprisoned, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

8. An arrested, detained or imprisoned person shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Qualifications and training

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

10. It is the duty of Governments, professional associations of lawyers and educational institutions to ensure that there is no discrimination against or in favour of a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status.

11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

Duties and responsibilities

12. Lawyers shall at all times maintain the honour and dignity of their profession. They shall, in practice as well as in private life, abstain from any behaviour that may discredit their position as essential agents of the administration of justice.

13. The duties of a lawyer towards his or her client shall include:

(a) Advising the client as to his or her legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the client;

(b) Assisting the client in every appropriate way, and taking legal action to protect him or her and his or her interests;

(c) Assisting the client before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall have an awareness of human rights and fundamental freedoms recognized by national and international law and shall at all times act freely, diligently and fearlessly in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall not simultaneously represent interests that would conflict with those of their clients.

Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers are (a) able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with established professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right of counsel is recognized shall refuse to recognize the right of a qualified lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Save in respect of proceedings for failing to show proper respect towards a court and, as provided in these principles, for disciplinary proceedings, a lawyer shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in his professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in order to enable lawyers to provide effective legal assistance to their clients. Such access shall be provided at the earliest appropriate date and, in criminal proceedings, not later than at the conclusion of investigation or pre-trial proceedings.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Freedom of expression and association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the established standards and ethics of the legal profession.

Professional associations of lawyers

24. In addition to being members to official bodies of the legal profession, lawyers shall be entitled to form and join self-governing professional

associations to regulate their profession, represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall co-operate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and established professional standards and ethics.

Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by professional associations of lawyers or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by a professional association of lawyers, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other established standards and ethics of the legal profession and in the light of these principles.

DRAFT RESOLUTION III

Model Treaty on the Transfer of Proceedings in Criminal Matters

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling the Milan Plan of Action, 1/ adopted by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985,

Recalling also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ which, in principle 37, stipulate that the United Nations should

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1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985: Report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. B.

prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling further the Seventh Congress resolution 12 3/ on transfer of proceedings in criminal matters, in which the Committee on Crime Prevention and Control was requested to study this subject and to consider the possibility of the formulation of a model treaty in this area,

Acknowledging the valuable contributions made by Governments, non-governmental organizations and individual experts to the drafting of the Model Treaty on Transfer of Proceedings in Criminal Matters, in particular the International Expert Meeting on United Nations and Law Enforcement, held under the auspices of the United Nations at Baden, Austria, from 16 to 19 November 1987, the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic 5: "United Nations Norms and Guidelines in Crime Prevention and Criminal Justice: Implementation and Priorities for Further Standard Setting", 4/ and the five regional preparatory meetings for the Eighth Congress,

Convinced that the establishment of bilateral and multilateral arrangements for the transfer of proceedings in criminal matters will greatly contribute to the development of more effective international co-operation aimed at controlling criminality,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights 5/ and the International Covenant on Civil and Political Rights, 6/

Recognizing the importance of the Model Treaty as an effective way of dealing with the complex aspects, consequences and modern evolution of transnational crime,

1. Adopts the Model Treaty on Transfer of Proceedings in Criminal Matters, set forth in the annex to the present resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral or multilateral treaties aimed at improving co-operation in matters of crime prevention and criminal justice;

2. Invites Member States, if they have not yet established treaty relations with other States in regard to transfer of proceedings in criminal matters, or if they wish to revise existing treaty relations, to take the Model Treaty into account whenever doing so;

3. Urges Member States further to strengthen international co-operation in criminal justice;

3/ Ibid., sect. E.

4/ A/CONF.144/IPM.5.

5/ General Assembly resolution 217 A (III) of 10 December 1948.

6/ General Assembly resolution 2200 A (XXI) (annex) of 16 December 1966.

4. Also urges Member States to inform the Secretary-General periodically of efforts undertaken to establish arrangements for transfer of proceedings in criminal matters;

5. Requests the Committee on Crime Prevention and Control to conduct periodic reviews of the progress attained in this field;

6. Requests the Secretary-General to assist Member States, at their request, in the development of treaties on the transfer of proceedings in criminal matters and to report regularly thereon to the Committee.

Annex

MODEL TREATY ON THE TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS

PREAMBLE

The _____ and the _____

Desirous of further strengthening international co-operation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

Believing that such co-operation should further the ends of justice, the social resettlement of offenders and the interests of the victims of crime,

Bearing in mind that the transfer of proceedings in criminal matters contributes to effective administration of justice and to reducing conflicts of competence,

Aware that the transfer of proceedings in criminal matters can help to avoid pre-trial detention and thus reduce the prison population,

Convinced, therefore, that the transfer of proceedings in criminal matters should be promoted,

Have agreed as follows:

ARTICLE 1

Scope of application

1. When a person is suspected of having committed an offence under the law of a State which is a Contracting Party, that State may, if the interests of the proper administration of justice so require, request another State which is a Contracting Party to take proceedings in respect of this offence.

2. For the purposes of applying this Agreement, a request of the requesting State to take proceedings shall provide the requested State with the necessary jurisdiction in respect of the offence if that State has not already jurisdiction under its own law.

ARTICLE 2

Channels of communications

3. A request to take proceedings shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

ARTICLE 3

Required documents

4. The request to take proceedings shall contain or be accompanied by the following information:

(a) The authority presenting the request;

(b) A description of the act for which transfer of proceedings is being requested, including the specific time and place of the offence;

(c) A statement on the results of investigations which substantiate the suspicion of an offence;

(d) The legal provisions of the requesting State on the basis of which the act is considered to be an offence;

(e) A reasonably exact statement on the identity, nationality and residence of the suspected person.

5. The documents submitted in support of a request to take proceedings shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

ARTICLE 4

Certification and authentication

6. Subject to national law and unless the Parties decide otherwise, a request to take proceedings and the supporting documents thereto, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication.*

ARTICLE 5

Decision on the request

7. The competent authorities of the requested State shall examine what action to take on the request to take proceedings in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the requesting State.

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*The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts.

ARTICLE 6

Dual criminality

8. A request to take proceedings can be complied with only if the act on which the request is based would be an offence if committed in the territory of the requested State.

ARTICLE 7

Grounds for refusal*

9. If the requested State refuses acceptance of a request for transfer of proceedings, it shall communicate the reasons for refusal to the requesting State. Acceptance may be refused if:

(a) The suspected person is not a national of or ordinary resident in the requested State;

(b) The act is an offence under military law, which is not also an offence under ordinary criminal law;

(c) The offence is in connection with taxes, duties, customs or exchange;

(d) The offence is regarded by the requested State as being of a political nature.

ARTICLE 8

The position of the suspected person

10. The suspected person may express to either State his or her interest in the transfer of the proceedings. Similarly, such interest may be expressed by the legal representative or close relatives of the suspected person.

11. Before a request for transfer of proceedings is made, the requesting State shall, if practicable, allow the suspected person to present his or her views on the alleged offence and the intended transfer, unless that person has absconded or otherwise obstructed the course of justice.

12. If the competence of the requested State is exclusively based on the provision in paragraph 2 of this Treaty, that State shall, before taking a decision on the request to take proceedings, allow the suspected person to present his or her views on the alleged offence and the intended transfer of proceedings.

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*When negotiating on the basis of this Model Treaty, States may wish to add other grounds for refusal or conditions to the list in this section, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights, or to considerations of public order.

ARTICLE 9

The rights of the victim

13. The requesting and requested States shall ensure in the transfer of proceedings that the rights of the victim of the offence, in particular his other right to restitution or compensation, shall not be affected as a result of the transfer. If a settlement of the claim of the victim has not been reached before the transfer, the requested State shall permit the representation of the claim in the transferred proceedings, if its law provides for such a possibility. In the event of the death of the victim, these provisions shall apply to his or her dependants accordingly.

ARTICLE 10

The effects of the transfer of proceedings on the requesting state (ne bis in idem)

14. Upon acceptance by the requested State of the request to take proceedings against the suspected person, the requesting State shall provisionally discontinue prosecution, except necessary investigation, including judicial assistance to the requested State, until the requested State informs the requesting State that the case has been finally disposed of. From that date on, the requesting State shall definitely refrain from further prosecution of the same offence.

ARTICLE 11

The effects of the transfer of proceedings on the requested state

15. The proceedings transferred upon agreement shall be governed by the law of the requested State. When charging the suspected person under its law, the requested State shall make the necessary adjustment with respect to particular elements in the legal description of the offence. Where the competence of the requested State is based on the provision set forth in paragraph 2 of this Treaty, the sanction pronounced in that State shall not be more severe than that provided by the law of the requesting State.

16. As far as compatible with the law of the requested State, any act with a view to proceedings or procedural requirements performed in the requesting State in accordance with its law shall have the same validity in the requested State as if the act had been performed in or by the authorities of that State.

17. The requested State shall inform the requesting State of the decision taken as a result of the proceedings. To this end a copy of any final decision shall be transmitted to the requesting State upon request.

ARTICLE 12

Provisional measures

18. When the requesting State announces its intention to transmit a request for transfer of proceedings, the requested State may, upon a specific request made for this purpose by the requesting State, apply all such provisional measures, including provisional detention and seizure, as could be applied under its own law if the offence in respect of which transfer of proceedings is requested had been committed in its territory.

ARTICLE 13

The plurality of criminal proceedings

19. When criminal proceedings are pending in two or more States against the same suspected person in respect of the same offence, the States concerned shall conduct consultations to decide which of them alone should continue the proceedings. An agreement reached thereupon shall have the consequences of a request for transfer of proceedings.

ARTICLE 14

Costs

20. Any costs incurred by a Contracting Party because of a transfer of proceedings shall not be refunded, unless otherwise agreed by both the requesting and requested States.

ARTICLE 15

Final provisions

21. This Treaty is subject to (ratification, acceptance or approval). The instruments of (ratification, acceptance or approval) shall be exchanged as soon as possible.

22. This Treaty shall enter into force on the thirtieth day after the day on which the instruments of ratification are exchanged.

23. This Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

24. Either Contracting Party may denounce this Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

Done at _____ on _____ in the _____ and _____
languages (both) texts being equally authentic.
(all)

DRAFT RESOLUTION IV

Model Treaty on the Transfer of Supervision of Offenders who have been Conditionally Sentenced or Conditionally Released

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Bearing in mind the Milan Plan of Action, 1/ adopted by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985,

Bearing in mind also, the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ which, in principle 37, stipulate that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling the Seventh Congress resolution 13, 3/ on transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released, in which the Committee on Crime Prevention and Control was requested to study this subject and to consider the possibility of the formulation of a model treaty in this area,

Acknowledging the valuable contributions made by Governments, non-governmental organizations and individual experts to the drafting of the Model Treaty on Transfer of Proceedings in Criminal Matters, in particular the International Expert Meeting on United Nations and Law Enforcement, held under the auspices of the United Nations at Baden, Austria, from 16 to 19 November 1987, the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic 5: "United Nations Norms and Guidelines in Crime Prevention and Criminal Justice: Implementation and Priorities for Further Standard Setting", 4/ and by the five regional preparatory meetings, for the Eighth Congress,

Convinced that the establishment of bilateral and multilateral arrangements for transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released will greatly contribute to the development of more effective international co-operation in penal matters,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights 5/ and the International Covenant on Civil and Political Rights, 6/

1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985: Report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chapt. I, sect. A.

2/ Ibid., sect. B.

3/ Ibid., sect. E.

4/ A/CONF.144/IPM.5.

5/ General Assembly resolution 217 A (III) of 10 December 1948.

6/ General Assembly resolution 2200 A (XXI) (annex) of 16 December 1966.

1. Adopts the Model Treaty on Transfer of Supervision of Foreign Offenders who have been Conditionally Sentenced or Conditionally Released, set forth in the annex to the present resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral or multilateral treaties aimed at improving co-operation in matters of crime prevention and criminal justice;

2. Invites Member States, if they have not yet established treaty relations with other States in the area of extradition, or if they wish to revise existing treaty relations, to take into account the Model Treaty whenever doing so;

3. Urges all Member States further to strengthen international co-operation in criminal justice;

4. Also urges Member States to inform the Secretary-General periodically of efforts undertaken to establish arrangements on transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released;

5. Requests the Committee on Crime Prevention and Control to conduct periodic reviews of the progress attained in this field;

6. Requests the Secretary-General to assist Member States, at their request, in the development of treaties on transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released, and to report regularly thereon to the Committee.

Annex

MODEL TREATY ON THE TRANSFER OF SUPERVISION OF FOREIGN OFFENDERS WHO HAVE BEEN CONDITIONALLY SENTENCED OR CONDITIONALLY RELEASED

The _____ and the _____

Desirous of further strengthening international co-operation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

Believing that such co-operation should further the ends of justice, the social resettlement of sentenced persons and the interest of the victims of crime,

Bearing in mind that the transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released can contribute to an increase in the use of alternatives to imprisonment,

Aware that supervision in the home country of the offender rather than enforcement of the sentence in a country where the offender has no roots also contributes to an earlier and more effective reintegration into society,

Convinced, therefore, that the social rehabilitation of offenders and the increased application of alternatives to imprisonment would be promoted by facilitating the supervision of conditionally sentenced or conditionally released foreign offenders in their State of ordinary residence,

Have agreed as follows:

ARTICLE 1

Scope of application

1. This Treaty shall be applicable, if, according to a final court decision, a person has been found guilty of an offence and has been:

(a) Placed on probation without sentence having been pronounced;

(b) Given a suspended sentence involving deprivation of liberty;

(c) Given a sentence, the enforcement of which has been modified (parole) or conditionally suspended, in whole or in part, either at the time of the sentence or subsequently.

2. The State where the decision was taken (sentencing State) may request another State (administering State), to take responsibility for applying the terms of the decision, including enforcement in the event of revocation (transfer of supervision).

ARTICLE 2

Channels of communications

3. A request for the transfer of supervision shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

ARTICLE 3

Required documents

4. A request for the transfer of supervision shall contain information on the identity, nationality and residence of the sentenced person. The request shall be accompanied by the original or a copy of any court decision referred to in the preceding provision and a certificate that this decision is legally binding (res iudicata).

5. The documents submitted in support of a request for transfer of supervision shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

ARTICLE 4

Certification and authentication

6. Subject to national law and unless the Parties decide otherwise, a request for transfer of supervision and the supporting documents thereto, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication.*

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*The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts.

ARTICLE 5

Decision on the request

7. The competent authorities of the administering State shall examine what action to take on the request for supervision in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the sentencing State.

ARTICLE 6

Dual criminality

8. A request for transfer of supervision can be complied with only if the act on which the request is based would constitute an offence if committed in the territory of the administering State.

ARTICLE 7

Grounds for refusal*

9. If the administering State refuses acceptance of a request for transfer of supervision, it shall communicate the reasons for refusal to the sentencing State. Acceptance may be refused where:

(a) The sentenced person is not an ordinary resident in the administering State;

(b) The act is an offence under military law, which is not also an offence under ordinary criminal law;

(c) The offence is in connection with taxes, duties, customs or exchange;

(d) The offence is regarded by the administering State as being of a political nature;

(e) The administering State, under its own law, can no longer carry out the supervision or enforce the sanction in the event of revocation because of lapse of time.

ARTICLE 8

The position of the sentenced person

10. Whether sentenced or standing trial, a person may express to the sentencing State his or her interest in a transfer of supervision and his or her willingness to fulfil any conditions to be imposed. Similarly, such interest may be expressed by his or her legal representative or close relatives. Where appropriate, the Contracting States shall inform the offender or his or her close relatives of the possibilities under this Treaty.

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*When negotiating on the basis of this Model Treaty, States may wish to add other grounds for refusal or conditions to the list, relating in this section, for example, to the nature or gravity of the offence, to the protection of fundamental human rights, or to considerations of public order.

ARTICLE 9

The rights of the victim

11. The sentencing State and the administering State shall ensure in the transfer of supervision that the rights of the victims of the offence, in particular his or her rights to restitution or compensation, shall not be affected as a result of the transfer. In the event of the death of the victim, this provision shall apply to his or her dependants accordingly.

ARTICLE 10

The effects of the transfer of supervision on the sentencing state

12. The acceptance by the administering State of the responsibility for applying the terms of the decision rendered in the sentencing State shall extinguish the competence of the latter State to enforce the sentence.

ARTICLE 11

The effects of the transfer of supervision on the administering state

13. The supervision transferred upon agreement and the subsequent procedure shall be carried out in accordance with the law of the administering State. That State alone shall have the right of revocation. That State may, to the extent necessary, adapt to its own law the conditions or measures prescribed, provided that such conditions or measures are, in terms of their nature or duration, not more severe than those pronounced in the sentencing State.

14. If the administering State revokes the conditional sentence or conditional release, it shall enforce the sentence in accordance with its own law without, however, going beyond the limits imposed by the sentencing State.

ARTICLE 12

Review, pardon and amnesty

15. The sentencing State alone shall have the right to decide on any application to reopen the case.

16. Each Party may grant pardon, amnesty or commutation of the sentence in accordance with the provisions of its Constitution or other laws.

ARTICLE 13

Information

17. The Contracting Parties shall keep each other informed, in so far as it is necessary, of all circumstances likely to affect measures of supervision or enforcement in the administering State. To this end they shall transmit to each other copies of any relevant decisions in this respect.

18. After expiration of the period of supervision, the administering State shall provide to the sentencing State, at its request, a final report concerning the supervised person's conduct and compliance with the measures imposed.

ARTICLE 14

Costs

19. Supervision and enforcement costs incurred in the administering State shall not be refunded, unless otherwise agreed by both the sentencing State and the administering State.

ARTICLE 15

Final provisions

20. This Treaty is subject to (ratification, acceptance or approval). The instruments of (ratification, acceptance or approval) shall be exchanged as soon as possible.

21. This Treaty shall enter into force on the thirtieth day after the day on which the instruments of ratification are exchanged.

22. This Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

23. Either Contracting Party may denounce this Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

_____ _____

Done at _____ on _____ in the _____
and _____ languages (both) texts being equally authentic.
(all)

DRAFT RESOLUTION V

Guidelines on the Role of Prosecutors

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling the Milan Plan of Action, 1/ adopted by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985,

Recalling also resolution 7 of the Seventh Congress in which the Committee on Crime Prevention and Control was called upon to consider the need for guidelines relating to prosecutors,

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1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985: Report prepared by the Secretariat (United Nations publication, No. E.86.IV.I), chap. I, sect. A.

Taking note with appreciation of the work accomplished, in pursuance of Seventh Congress resolution 7, by the Committee and by the regional preparatory meetings for the Eighth Congress,

1. Adopts the Guidelines on the Role of Prosecutors set forth in the annex to the present resolution;

2. Recommends the Guidelines for national, regional and interregional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;

3. Invites Member States to take into account and to respect the Guidelines within the framework of their national legislation and practice;

4. Also invites Member States to bring the Guidelines to the attention of prosecutors and other members of the executive, judges, lawyers, the legislature and the public in general;

5. Urges the regional commissions, the regional and interregional institutes in the field of the prevention of crime and the treatment of offenders, the specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations having consultative status with the Economic and Social Council to become actively involved in the implementation of the Guidelines;

6. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, the implementation of the present resolution;

7. Requests the Secretary-General to take steps, as appropriate, to ensure the widest possible dissemination of the Guidelines, including their transmission to Governments, intergovernmental and non-governmental organizations and other parties concerned;

8. Also requests the Secretary-General to prepare every five years, beginning in 1993, a report on the implementation of the Guidelines;

9. Further requests the Secretary-General to assist Member States, at their request, in the implementation of the Guidelines and to report regularly thereon to the Committee;

10. Requests that the present resolution be brought to the attention of all the United Nations bodies concerned.

Annex

UNITED NATIONS GUIDELINES ON THE ROLE OF PROSECUTORS

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights a/ enshrines the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts undertaken to translate them fully into reality,

Whereas prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime,

Whereas it is essential to ensure that prosecutors possess the professional qualifications required for the accomplishment of their functions, through improved methods of recruitment and legal and professonal training, and through the provision of all necessary means for the proper performance of their role in combatting criminality, particularly in its new forms and dimensions,

Whereas the General Assembly, by its resolution 34/169 of 17 December 1979, adopted the Code of Conduct for Law Enforcement Officials, on the recommendation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Whereas in resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, b/ the Committee on Crime Prevention and Control was called upon to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary, c/ subsequently endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

Whereas, in resolution 7 of the Seventh Congress, the Committee was called upon to consider the need for guidelines relating, inter alia, to the selection, professional training and status of prosecutors, their expected tasks and conduct, means to enhance their contribution to the smooth functioning of the criminal justice system and their co-operation with the police, the scope of their discretionary powers, and their role in criminal proceedings, and to report thereon to future United Nations congresses,

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a/ General Assembly resolution 217 A (III) of 10 December 1948.

b/ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August to 5 September 1980: Report prepared by the Secretariat, (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

c/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 5 September 1985: Report prepared by the Secretariat (United Nations publication, No. E.86.IV.I), chap. I, sect. D.

The guidelines set forth below, which have been formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general.

Qualifications, selection and training

1. Persons selected as prosecutors, irrespective of their position as members of the judiciary, the executive or the legal profession, shall be individuals of integrity and ability, with appropriate training and qualifications.

2. States shall ensure that:

(a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against or in favour of a person on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, except that it would not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;

(b) Prosecutors have appropriate education and training and be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect, and of human rights and fundamental freedoms recognized by national and international law.

Status and conditions of service

3. States shall further ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

4. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.

5. The conditions of service of prosecutors, their security, adequate remuneration, and, where applicable, tenure, pension and age of retirement, shall be secured by law.

6. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.

Freedom of expression and association

7. Prosecutors are, like other citizens, entitled to freedom of expression, belief, association and assembly, provided that in excercising such rights they shall always conduct themselves in such a manner as to preserve the dignity of their office.

8. Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.

Role in criminal proceedings

9. The office of prosecutors shall be strictly separated from judicial functions.

10. Prosecutors shall perform an active role in the investigation of crime and in criminal proceedings, including institution of prosecution, and, where authorized by law, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

11. Consistent with their crucial and far-reaching role in society and the high degree of responsibility required by their profession, prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

12. In the performance of their duties, prosecutors shall:

(a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;

(b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect.

(c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise.

13. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings when an impartial investigation shows the charge to be unfounded.

14. Prosecutors shall give special attention to the investigation and prosecution of serious crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law.

15. When prosecutors come into possession of evidence against suspects which they know to have been obtained directly or indirectly through recourse to unlawful methods, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other grave violations of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

Discretionary functions

16. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution, as well as adequate judicial monitoring of the exericise of prosecutorial discretion, as required. Criteria to be followed by prosecutors in exercising discretion shall be made available to persons concerned on request.

Alternatives to prosecution

17. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of the alleged offender(s) and the victim(s), provided that such measures do not affect essential public interests. For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

18. Prosecutory action against juveniles shall be used sparingly. In taking a decision whether or not to prosecute a juvenile, special consideration shall be given to available alternatives to prosecution under the relevant juvenile justice laws and procedures.

Relations with other public agencies or institutions

19. In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to co-operate with the police, the courts, the legal profession, public defenders and other public agencies or institutions within or outside the justice system.

Disciplinary proceedings

20. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing.

21. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of these Guidelines.

Observance of the Guidelines

22. Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and rigorously oppose any violations thereof.

23. Prosecutors who have reason to believe that a violation of the present Guidelines has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.